when a heavy cake of ice slipped and fell on him when he was unloading it from his wagon; three witnesses for defendant testified that they were present at the time and place of the alleged accident, and that no such accident happened to decedent; the only evidence to support plaintiff's version was the testimony of plaintiff herself, a physician, and one other person, to the effect that decedent had told them that he was injured in the manner claimed by plaintiff. The Workmen's Compensation Commission made an award for plaintiff based on this hearsay testimony, which it considered to be admissible under § 68 of the Compensation Act, providing that the Commission "shall not be bound by common law or statutory rules of evidence * * *" but shall conduct its hearings "in such manner as to ascertain the substantial rights of the parties." The award was sustained in the Supreme Court (169 App. Div. 450, 155 N. Y. Supp. 1) and defendant company appealed to the Court of Appeals. *Held,* (SEABURY and POUND, JJ. dissenting) that while hearsay evidence is clearly admissible under § 68, the only "substantial evidence" before the Commission was the testimony of defendant's witnesses to the effect that there was no such accident as was claimed by plaintiff; that under the circumstances the evidence as to decedent's declarations was no evidence, and that the claim for compensation should accordingly be dismissed. *Carroll* v. *Knickerbocker Ice Co.* (N. Y. 1916), 113 N. E. 507.

For a discussion of the principles involved in this case, see comment on the decision of the same case in the Appellate Division of the Supreme Court in 14 MICH. L. REV. 158.

EVIDENCE—VALUE OF CROP DESTROYED BY HAIL.—Plaintiff's crops were insured with defendant company against loss by hail. Plaintiff's small grain was about ten inches high and the corn about six inches high when the hail injured it. Evidence of the crop yield in the neighboring fields was *held* to be admissible to establish the amount of loss, there being also evidence that the conditions there were practically the same before loss. *Stockwell* v. *German Mut. Ins. Assn. of LeMars* (S. D. 1916), 158 N. W. 450.

The method of proof of loss on growing crops is in a state of confusion. One line of cases holds that witnesses, usually farmers especially conversant with the crop-producing qualities of the particular locality in question, will be allowed to give their opinion as to the value of the matured crop of the field in question, basing such opinion on the usual yield of the land in seasons similar to that in which the loss occurred. *Railway Company* v. *Lyman,* 57 Ark. 512, 22 S. W. 170; and *St. Louis et R. R. Co.* v. *Yarborough,* 56 Ark. 612, 20 S. W. 515; *Sayers* v. *M. P. R. Co.,* 82 Kan. 123, 107 Pac. 641, 27 L. R. A. N. S. 168. Another line of cases decides the amount of loss entirely upon opinion evidence of so-called expert witnesses, laying down no particular method by which they are to reach their conclusions, but leaving it entirely to the witness to estimate the probable yield had no loss occurred, without stating the foundations of his estimate. These cases go upon the theory that it is a situation that cannot be so adequately described by a witness that a jury could draw an intelligent conclusion, hence allow opinion

evidence. *Chicago, Burlington, etc. R. R. Co.* v. *Schaeffer,* 26 Ill. App. 280; *Otowa* v. *Graham,* 35 Ill 346; *G. & S. E. R. R. Co.* v. *Hoslam,* 73 Ill. 494; *C. & St. L. R. R. Co.* v. *Woosley,* 85 Ill. 370. The third line of decisions is in agreement with the instant case, holding that the yield of an uninjured part of the field destroyed, or the yield of neighboring fields produced under approximately similar conditions, may be made the basis of proof of loss. *Gulf, Colorado & Santa Fe Ry. Co.* v. *McGowon,* 73 Tex. 355, 11 S. W. 336; *Ethridge* v. *San Antonio etc. Ry. Co.* (Tex. Civil App.), 39 S. W. 204; *Adams* v. *Stadler,* 78 Ill. App. 432; *Teller* v. *Bay & River Dredging Company,* 151 Cal. 209, 90 Pac. 942, 12 L. R. A. N. S. 267, 12 Ann. Cas. 779; *Shoemaker* v. *Acker,* 116 Cal. 239, 48 Pac. 62. JONES, EVIDENCE, § 384; *International Agricultural Corporation* v. *Abercrombie,* 184 Ala. 244, 63 So. 549, and note in 49 L. R. A. N. S. 415; *Barry* v. *Farmers Mutual Hail Ins. Co.,* 110 Ia. 433, 81 N. W. 690; *Condon* v. *Des Moines Mutual Hail Ins. Assn.,* 120 Ia. 80, 94 N. W. 477.

EVIDENCE—WIFE AS WITNESS AGAINST HUSBAND IN PROSECUTION FOR INCEST.—Defendant was prosecuted for incest and his wife was allowed to testify against him over his objection. The Iowa Statute (§ 4606) provided that "neither the husband nor wife shall in any case be a witness against the other, except in a criminal prosecution for a crime committed one against the other. * * *" *Held,* that a wife is a competent witness against her husband in a prosecution for incest, as incest committed by the husband is a crime committed against the wife, and hence is within the exception to the statutory prohibition. *State* v. *Schultz* (Iowa 1916), 158 N. W. 539.

The court cites one case which sustains its ruling—*State* v. *Chambers,* 87 Iowa 1, 53 N. W. 1090, 43 Am. St. Rep. 349, which seems to be the only case thus decided on this exact point. The Iowa court has also held that adultery and bigamy are crimes against the innocent spouse making such spouse competent as a witness. *State* v. *Bennett,* 31 Iowa 24; *State* v. *Sloan,* 55 Iowa 217. The weight of authority is, however, against the Iowa cases: as to incest (*State* v. *Burt,* 17 S. D. 7, 94 N. W. 409, 62 L. R. A. 172, 106 Am. St. Rep. 759; *Compton* v. *State,* 13 Tex. Ct. App. 271, 44 Am. Rep. 703); as to adultery (*State* v. *Vollander,* 57 Minn. 225, 58 N. W. 878; *People* v. *Imes,* 110 Mich. 250, 68 N. W. 157; *Comm.* v. *Sparks,* 7 Allen 534) and as to bigamy (*People* v. *Quanstrom,* 93 Mich 254, 53 N. W. 165, 17 L. R. A. 723; *Hiler* v. *People,* 156 Ill. 511, 41 N. E. 181, 47 Am. St. Rep. 221). In *Compton* v. *State, supra,* the Texas court overruled two earlier Texas cases (*Morrill* v. *State,* 5 Tex. Ct. App. 447 and *Roland* v. *State,* 9 Tex. Ct. App. 277) which had held that adultery was a crime against a spouse so as to make such spouse a competent witness under a like statute. In *Basset* v. *United States,* 137 U. S. 496, it was held that a wife could not testify against her husband who was prosecuted for polygamy. In *State* v. *Woodrow,* 58 W. Va. 527, 52 S. E. 545, 2 L. R. A. N. S. 862, defendant shot at his wife, wounding her and killing her child which she held in her arms; his conviction for murdering the child was reversed because of the admission of the wife's testimony, the court holding that the killing of the child was not a crime against the